



DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

Docket No. RHS-21-SFH-003

RIN: 0575-AD22

Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, Agriculture Department (USDA).

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is implementing changes to the Single -Family Housing Guaranteed Loan Program (SFHGLP) to update the requirements for Federally supervised lenders, minimum net worth and experience for non-supervised lenders, approved lender participation requirements, handling of applicants with delinquent child support payments, and builder credit requirements.

DATES: This final rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Laurie Mohr, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, STOP 0784, Room 2250, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250-0784, telephone: (314) 679-6917; or email: laurie.mohr@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Rural Housing Service (RHS or Agency) is an agency of the United States Department of Agriculture (USDA) and offers a variety of programs to build or improve

housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, State and Federal Government agencies, and local communities.

The RHS is issuing a final rule to amend the Single-Family Housing Guaranteed Loan Program (SFHGLP) regulation, 7 CFR part 3555, subparts B, C and D which will reinforce oversight and management of the growing SFHGLP portfolio. These changes will promote an efficient and robust management and oversight structure of lenders in the SFHGLP by strengthening underwriting practices, providing guidance for processing loan guarantees for applicants who are subject to administrative offset to collect delinquent child support payments, and streamline requirements for screening builder-contractors by lenders.

The updates align with the standards for managing credit programs recommended by the Office of Management and Budget (OMB) for Federally supervised lenders, minimum net worth, minimum line of credits, minimum experience, and approved lender participation requirements. These updates will also provide guidance for processing applications for individuals with delinquent child support payments and relaxes builder requirements to better align with the credit program requirements of other Federal agencies.

II. Discussion of Public Comments

RHS published a proposed rule on June 9, 2021 (86 FR 30555) to solicit comments on the proposed updated requirements for Federally supervised lenders, minimum net worth and experience for non-supervised lenders, approved lender participation requirements, treatment of applicants with delinquent child support payments, and builder credit requirements for SFHGLP (86 FR 30555). The Agency received comments from six respondents including

individuals, mortgage companies, and interested parties. Three of the comments are not applicable to the contents of the rule.

The following is a summary of the relevant comments:

Comment 1: One respondent opposed eliminating the background checks for builders stating the builder's integrity could not be thoroughly checked to avoid court appearances and rebuilding homes.

Agency Response: The Agency still relies on the lender to review and approve construction contractors or builders. The Agency has determined that these credit requirements are not the industry standard. The builder-contractor's ability to participate in such projects should be based on the applicant's and lender's review of the builder-contractor's experience, reputation, and financial ability to complete the project in a timely, efficient, and competent manner. The Agency believes the stance is correctly stated and stands behind the rule changes.

Comment 2: One respondent replied in favor of the proposed rule stating obtaining background checks for builders were difficult to obtain and could potentially hurt a builder's reputation if, for some unforeseen reason, you could not obtain a builder approval.

Agency Response: The Agency has determined no action is required.

Comment 3: One respondent agreed with certain delinquent child support provisions in the rule, however, the respondent raised concerns that the proposed change would be unduly difficult for rural families and children who are already experiencing housing challenges. The respondent noted that employment in rural areas is limited and felt that there are other means to addressing delinquent child support.

Agency Response: The Agency believes the stance is correctly stated and stands behind the rule changes.

III. Summary of Rule Changes

A summary of the changes includes amending 7 CFR 3555.51(a)(8) to eliminate items (a)(8)(iv) because it refers to the Office of Thrift Supervision (OTS), which no longer exists. Furthermore, the current §3555.51(a)(9) and (10) is intended to provide a path for lenders that are not regulated by state or federal agencies and do not meet the requirements of (a)(1) through (8) an opportunity to participate in the SFHGLP. Therefore, the introductory paragraph of §3555.51(a)(9) and (10) will be amended to clarify that when lenders cannot meet the demonstrated ability criteria outlined under §3555.51(a)(1) through (8), those lenders must submit additional documentation to demonstrate their ability to originate loans.

The final rule will amend §3555.51 by adding paragraph (a)(11) (i) and (ii) to reflect Financial Requirements for Non-Supervised Lenders. All lenders not supervised by federal entities listed in §3555.51 (a)(8) must have: (i) A minimum adjusted net worth of \$250,000, or at least \$50,000 in working capital plus one percent of the total volume in excess of \$25 million in guaranteed loans originated, serviced, or purchased during the lender's prior fiscal year, up to a maximum required adjusted net worth of \$2.5 million and, (ii) one or more lines of credit with a minimum aggregate of \$1 million. The proposed financial thresholds are based on recommendations analysis of participating lenders. §3555.51(a). Establishing minimum financial requirements for non-supervised lenders would potentially reduce the Agency's risk of doing business with entities that have insufficient financial resources. Lenders that meet these minimum financial requirements demonstrate trustworthiness that would contribute to the success of the SFHGLP. The Agency took a combination approach when developing the minimum requirements, including the Veterans Administration (VA) base requirement and adding a volume component to it. This is structured and capped following the FHA standard. By taking this action, the Agency will align lender approval

requirements with those of other Federal credit programs and incorporate¹ the best practice recommendations outlined in Office of Management and Budget (OMB) Circular A-129.²

Federally supervised lenders that meet the criteria of §3555.51(a)(8) have demonstrated ability and will not be required to provide additional documentation. The Agency will require less documentation from the lender and make the process more efficient for Federally supervised lenders.

This final rule clarifies that lenders must meet applicable requirements in order to begin and continue participation in the SFHGLP. The Agency generally reviews each lender every two years to ensure compliance.

The Agency will amend §3555.51 (b), SFHGLP participation requirements, to clarify by adding subparagraph (23) that lender eligibility will be reviewed every two years for continued participation in the SFHGLP. In addition, the Agency will clarify by adding subparagraph (24) that principal officers must have a minimum of two years of experience in originating or servicing mortgage loans as recommended in OMB Circular A-129. In order to be deemed eligible for continued lender participation in the SFHGLP, the lender and its principal officers must continue to meet all the criteria as outlined in §3555.51, which, as amended, will include specific experience in underwriting and servicing loans, financial requirements for non-supervised lenders, and SFHGLP participation requirements.

The Agency has determined that obtaining builder-contractors credit and background checks is not an industry standard. The builder-contractor's ability to participate in such projects should be based on the applicant's and lender's review of the builder-contractor's experience, reputation, and financial ability to complete the project in a timely, efficient, and competent manner. The Agency will remove §3555.105(b)(4) and (5) and thus streamline

² Available at: <https://fiscal.treasury.gov/files/dms/circ-a129-upd-0113.pdf>. OMB requires credit granting agencies to establish and publish in the Federal Register specific eligibility criteria for lender or servicer participation in Federal credit programs, including qualification requirements for principal officers and staff of the lender or servicer. OMB Circular A-129, p. 12.

screening requirements, reduce administrative burden on the lender, and align with other Federal programs, including the agency's Direct Section 502 loan program, which does not have such requirements for builder-contractors.

Additionally, the Agency considers delinquent child support payments subject to administrative offset a significant derogatory obligation and an indication that an applicant does not have the reasonable ability or willingness to meet their obligations. It would be against the federal government's interest to guarantee a loan for an applicant from whom the federal government is simultaneously pursuing collection for a delinquent debt. This final rule will amend §3555.151(i) (9) to specify that borrowers with delinquent child support payments, subject to collection by administrative offset, are ineligible unless the payments are brought current, the debt is paid in full, or otherwise satisfied.

IV. Regulatory Information

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866, Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all state and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of

the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, and tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, "Environmental Policies." RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and States, or on the distribution of

power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

The rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature on this document that this final rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the requirements of Executive Order 12372, “Intergovernmental Review of Federal Programs,” as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This Executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this final rule, they are encouraged to contact USDA’s Office of Tribal Relations or RD’s Native American Coordinator at: AIAN@usda.gov to request such a consultation.

Programs Affected

The program affected by this final rule is listed in the Assistance Listing (AL) (*formerly Catalog of Federal Domestic Assistance*) under number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0575-0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Civil Rights Impact Analysis

Rural Development has reviewed this final rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes, or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

USDA Non-Discrimination Policy

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender

identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW.

Washington, D.C. 20250-9410; or

(2) Fax: (833) 256-1665 or (202) 690-7442; or

(3) E-mail: Program.Intake@usda.gov

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List of Subjects in 7 CFR Part 3555

Construction, eligible loan purpose, home improvement, loan programs – housing and community development, loan terms, mortgage insurance, mortgages, and rural areas.

For the reasons discussed in the preamble, the Agency is proposing to amend 7 CFR part **3555 as follows:**

PART 3555 – GUARANTEED RURAL HOUSING PROGRAM

1. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart B – Lender Participation

2. Amend §3555.51 by:

(a) Revising paragraph (a)(8), the introductory text of paragraph (a)(9) and the introductory text of paragraph(10).

(b) Adding paragraph (a)(11); and

(c) Adding paragraphs (b)(23) and (24).

The additions and revisions read as follows:

§3555.51 Lender eligibility.

* * * * *

(a) * * *

(8) A Federally supervised lender that provides documentation of its ability to originate, underwrite, and service single-family loans. Acceptable sources of supervision include:

(i) Being a member of the Federal Reserve System.

(ii) The Federal Deposit Insurance Corporation (FDIC).

(iii) The National Credit Union Administration (NCUA).

(iv) The Office of the Comptroller of the Currency (OCC).

(v) The Federal Housing Finance Board regulating lenders within the Federal Home-Loan Bank (FHLB) system.

(9) If lenders cannot meet the requirements under paragraphs (a)(1) through (8) of this section, they may demonstrate its ability to originate and underwrite loans by submitting appropriate documentation, examples of which include, but are not limited to:

* * * * *

(10) A lender that proposes to service loans that cannot meet paragraphs (a)(1) through (8) of this section must demonstrate its ability by submitting appropriate documentation, examples of which include but are not limited to:

* * * * *

(11) The financial requirements for non-supervised lenders not covered in paragraph (a)(8), must have:

(i) A minimum adjusted net worth of \$250,000, or \$50,000 in working capital plus one percent of the total volume in excess of \$25 million in guaranteed loans originated, serviced, or purchased during the lender's prior fiscal year, up to a maximum required adjusted net worth of \$2.5 million, and

(ii) One or more lines of credit with a minimum aggregate of one million dollars.

(b) ***

(23) Provide documentation as required by the Agency to be reviewed every two years for lender participation and,

(24) Provide evidence that principal officers have a minimum of two years of experience in originating or servicing guaranteed mortgage loans as recommended in OMB Circular A-129.

Subpart C – Loan Requirements

§3555.105 [Amended]

3. Amend §3555.105 paragraph (b) by removing paragraphs (b)(4) and (5) and redesignating paragraph (b)(6) as (b)(4).

Subpart D – Underwriting the Applicant

4. Amend §3555.151 by adding paragraph (i)(9) to read as follows:

§3555.151 Eligibility Requirements.

* * * * *

(i) * * *

(9) Applicants with delinquent child support payments subject to collection by administrative offset are ineligible unless the payments are brought current, the debt is paid in full, or otherwise satisfied.

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Joaquin Altoro,
Administrator,
Rural Housing Service.

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